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In re Application of BRESSY et al.
Application No.: 10/500,983
PCT No.: PCT/EP03/00075
Int. Filing: 07 January 2003
Priority Date: 07 January 2002
Attorney Docket No.: 740612-186
For: PROTECTING A DEVICE AGAINST
UNINTENDED USE IN A SECURE ENVIRONMENT

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: DECISION ON PETITION

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: UNDER 37 CFR 1.47(a)
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This is a decision on applicant's petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 27 October 2004, to accept the application without the signature of joint inventor, Philippe Bressy.

BACKGROUND

On 06 July 2004, applicant filed a transmittal letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee.

On 02 September 2004, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration in accordance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period was required.

On 27 October 2004, applicant filed the instant petition along with a declaration executed by the joint inventor on behalf of the nonsigning inventor Philippe Bressy. The petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4) requested the acceptance of the application without the signature of inventor, Philippe Bressy, alleging that Mr. Bressy refuses to sign the application.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

The petition included the requisite petition fee, satisfying Item (1). Item (3) is satisfied because the last known address of non-signing inventor, Philippe Bressy, was provided. With regard to item (4), the declaration was executed by the joint inventor on his behalf and on behalf of the non-signing inventor and satisfies the requirements of 37 CFR 1.47(a).

Applicant satisfied Item (2) with the submission of the statement of Virginie Delemotte, patent manager for SCM Microsystems, stating that she "forwarded the patent application to the other inventor, Philippe Bressy,he refused to sign the Declaration and Power of Attorney

unless he was paid monies to which he is not entitled." (Delemotte Decl. ¶3). Ms Delemotte further states: "a registered letter with confirmation of delivery was sent by me to Philippe Bressy on September 27, 2004, which was the identical letter sent on August 9, 2004 except that this letter enclosed copies of the application as well as the Declaration and Power of Attorney and Assignment. It requested that he sign the Declaration and Assignment and return the signed documents by October 15, 2004. " A copy of this letter was attached to Ms. Delemotte's statement.

A copy of the E-mail correspondence (with English translations) between Mr. Bressy and Ms. Delemotte were provided, wherein Mr. Bressy refuses to sign the documents without compensation. This is sufficient evidence to conclude that Philippe Bressy refuses to sign the declaration. Ms Delemotte's statement satisfies Item (2) above.

Petitioner has satisfied the requirements of 37 CFR 1.47(a). Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

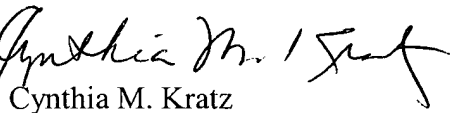
CONCLUSION

The petition under 37 CFR §1.47(a) is GRANTED.

The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 27 October 2004. The application has an international filing date of 07 January 2003 under 35 U.S.C. 363, and a date of 27 October 2004 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.

The application is being returned to the United States Designated/Elected Office for further processing.



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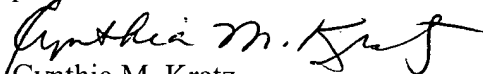
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Dear Mr. Bressy:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.


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